IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No. 847 of 2001.

Judgment reserved on 29.11.2006:

Date of decision 4.1.2007.

Pawan Kumar ……**Petitioner.**

Versus

H.P. State Industrial Dev. Corporation & Anr. ……**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner: **Mr. K.D.Sood, Advocate.**

For Respondent No. 1. **Mr. Ajay Kumar, Advocate.**

Dev Darshan Sud, J.

The petitioner has challenged the order of the Industrial Tribunal-cum- Labour Court, dated 16.3.2001, passed in Reference No. 62 of 1997, whereby the petitioner has been ordered to be reinstated in service with full back seniority. While allowing the reference filed on behalf of the petitioner, it was ordered that he shall be entitled

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

to 20% of the wages. There is no evidence on the record by the workman to show that he was unemployed.

It is now well settled that unless the employee shows that he was not gainfully employed, for which purpose the burden is on him, the workman is not entitled to any back wages.

The Hon'ble Supreme Court of India in *Kendriya Vidyalaya Sanghathan and Anr. Vs. S.C. Sharma, 2005 LLR 275,* has held that the entitlement to back wages stands determined by the Hon'ble Supreme Court in number of decisions. In para-11 of the judgment in *Kendriya Vidyalaya* case, their Lordships have held as under:

> **"Applying the above principle, the inevitable conclusion is that the respondent was not entitled to full back wages which according to the High Court was natural consequence. That part of the High Court order is set aside. When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The**

> **initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard."**

This proposition of law has been reaffirmed in *U.P. State Barassware Corporation Limited and Another* Vs. *Uday Narain Pandey*, (2006) 1 SCC 479 and *State of M.P and others* Vs. *Arjunlal Rajak*, (2006) 2 SCC 711.

There is thus no merit in the writ petition which is accordingly dismissed. There shall be no order as to costs.

January 4, 2007. (Dev Darshan Sud), J.
PC.